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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A./T.A. NO. 1682/95 /19

Decided on : 11-1-1996

Shri R.S. Sagar

... Applicant(s)

(By Shri V.K.Rao

Advocate)

versus

U.O.I. & others

... Respondent(s)

(By Shri B.Lall

Advocate)

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THE HON'BLE SHRI N.V.Krishnan, Acting Chairman

THE HON'BLE ~~SMT~~ Smt.Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not ? *Y*
2. Whether to be circulated to other Benches of the Tribunal ? *X*

Lakshmi
(Smt.Lakshmi Swaminathan)
Member (J)

(N.V.Krishnan)
Acting Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1682/95

Date of Decision: 11-1-1996

Hon'ble Shri N.V. Krishnan, Acting Chairman
Hon'ble Smt. Lakshmi Swaminatha, Member (J)

Shri R.S. Sagar,
s/o late Shri S.R. Sagar,
r/o D-72, Gali No. 3,
Laxmi Nagar, Delhi-92.

... Applicant

By Advocate: Shri V.K. Rao

Vs.

1. Union of India
through the Secretary,
Ministry of Urban Development,
Nirman Bhawan, New Delhi.

2. Director General of Works,
Central Public Works Department,
Nirman Bhawan, New Delhi.

... Respondents

By Advocate: Shri B. Lall

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The applicant is aggrieved by the orders dated 20.10.94 and dated 4.9.95 (Annexure A and A-1) by which a number of persons who are Executive Engineers (civil) were promoted to officiate as Superintending Engineers (Civil) w.e.f. the dates mentioned in the annexure in which the applicant's name does not find a place.

According to ^{the} applicant some of his juniors, for example



Shri S.D. Jhamb at Sr. No. 12 has been promoted w.e.f.

31.12.83. The applicant's prayers are -

- a) that he should be promoted to the post of S.E.(C) on regular basis w.e.f. 31.12.83, on the date from which the persons junior to him have been regularly promoted with all consequential benefits and
- b) to consider his promotion to the post of Chief Engineer(Civil).

2. Briefly stated the facts are that the applicant was promoted as SE(C) vide order dated 11.10.82 on ad hoc basis and is still continuing in the said post/ By the impugned orders dated 20.10.94 and 4.9.95 he alleges that the persons who are junior to him have been regularly promoted w.e.f. 31.12.83 and he has been overlooked. He states that he has been performing his duties with utmost honesty and integrity and no chargesheet had been issued on or before 31.12.83 which is the date of regular promotion of juniors, which could be the only reason to deny him promotion. The learned counsel for the applicant relies on the judgement of Hon'ble Supreme Court in UOI Vs. K.V.

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Jankiraman (1991(5) SLR 602). The applicant, however, admits that he has been issued a chargesheet on 30.10.85 for certain misconduct which is still pending. According to him, the chargesheet given in 1985 cannot come in the way of his promotion to the post of SE(C) because any incident after 31.12.83 cannot be taken into account as a reason to deny him the promotion prior to that date. He submits that prior to 31.12.83 there was no material or charges against him to deny him the promotion as given to his juniors. He also admits that another chargesheet had been issued for minor penalty on 10.9.93, which also he submits can have no bearing on the denial of his promotion w.e.f. 31.12.83.

3. Shri V.K. Rao, learned counsel for the applicant relies on the judgement of ^{the} Punjab and Haryana High Court in State of Punjab and another Vs. S.I. Hartej Singh (1988(6) SLR 376) in which it was held ^{that} pendency of departmental enquiry is no good ground to ignore promotion as promotion has to be considered on the basis of ^{record} in existence on the date when his juniors were promoted. He also relies in another case ^{of the} Karnataka High Court - A. Sadashiva Vs. State of Karnataka and another (1982(3)SLR 364) and the judgement of the Rajasthan High Court in O.P. Sharma Vs. The United Commercial Bank, Jaipur and another (1993(8) SLR 693).

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Relying on these judgements Shri Rao submits that since no chargesheet or disciplinary proceedings were initiated or pending on or before 31.12.83 when his juniors were promoted, the applicant cannot be ignored for the promotion now. Relying on the judgement of the Supreme Court in K.V. Janki Raman's case, he submits that the applicant was entitled to be given his promotion from the date his juniors were promoted as SE(C). The fact that he is still continuing on ad hoc basis in this post should also have been taken into account for giving him the regular promotion and also for the next higher promotion of Chief Engineer(Civil).

4. The respondents have filed a short reply to the O.A. They have agreed that the applicant is working as SE(C) on ad hoc basis w.e.f. 11.10.82. They submit that he could be considered for promotion to the post of Chief Engineer(Civil) only after he is first appointed as SE(Civil) on regular basis. They state that from September to October 1994 the UPSC had considered all the ad hoc promotees to the posts of SE(Civil) for regular appointments by holding yearwise DPCs from 1982 to 1994, and the applicant was also considered alongwith his juniors. For the DPCs for the years 1983 onwards, while his juniors were cleared from the vigilance angle, their orders promoting them as S.E.(Civil) on regular

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basis were issued w.e.f. 31.12.83 whereas they submit that the applicant was not cleared from the vigilance angle. The applicant has been served with two chargesheets, one dated 30.10.85 for major penalty and the other dated 10.9.93 for minor penalty (Annexures R I and R II). In so far as the chargesheet dated 30.10.85 is concerned, the Inquiry Officer has already submitted the inquiry report to the disciplinary authority for taking a decision. The other chargesheet dated 10.9.93 is stated to be under consideration of the disciplinary authority. The respondents, therefore, submit that it is because of those disciplinary proceedings pending against the applicant that the recommendation of the DPC held in 1994 for regular promotion as S.E. (Civil) has been kept in a sealed cover.

5. The respondents further submit that the contention of the applicant that since there was no disciplinary proceedings pending against him on 31.12.83, he should be promoted with effect from that date is without any basis. Shri B. Lall, learned counsel for the respondents has submitted that the chargesheet dated 30.10.85 for major penalty relates to incidents during the period from 1980 to 1984. Therefore, he submits that when the DPC was held in 1994 for considering those who were working on ad hoc posts for promotion on regular basis as SE (Civil), which also considered the

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applicant's case, since he was not cleared from the vigilance angle his case has been correctly kept in a sealed cover.

In the circumstances, the respondents have submitted that it is not correct to say that the applicant was clear from the vigilance angle on 31.12.83 and he could be promoted as effect from SE(Civil) on regular basis with/ that date. Since he has not been promoted on regular basis as SE(Civil), the question of his becoming eligible for consideration for promotion to the post of Chief Engineer(Civil) does not also arise.

They have submitted that the application may therefore be dismissed, Shri Lall has relied upon on the judgements of the Supreme Court in UDI V. K.V. Jankiraman (supra); UDI Vs. Kewal Kumar (1993(2) SLR 554) and Delhi Development Authority Vs. H.C. Khurana (1993(2)SLR 509),

6. We have carefully considered the arguments of both the Ed. counsel and perused the record of the case.

7. This is a case where the DPC met in September-October 1994 for consideration of promotion of all adhoc promotees to the post of S.E.(Civil) for regular appointments. The DPC has considered the eligible candidates yearwise for the years 1982 to 1994. For the DPCs/1983 onwards, it is also stated that the applicant has been considered along with his juniors. In the circumstances, the only question which

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arises is whether the action of the respondents to keep the promotion of the applicant in a sealed cover is justified or not.

8. The applicant's case is that even though two chargesheets have been issued, one on 30.10.85 for major penalty charges and the second on 10.9.93 for minor penalty charges, these were not there or/ ^{effective} on the operative date i.e. 31.12.83 when his juniors were promoted. Since he is also continuing to work on ad hoc basis as SE(Civil), his selection cannot be put in a sealed cover as has been held in K.V. Janki mans case(supra), as there was no disciplinary action either initiated or pending against him on this date. Admittedly, the applicant has not been ignored by the DPC which met in 1994 to consider the persons who were holding the posts of SE(Civil) on ad hoc basis for regular promotion. The only question, therefore, is whether the DPC should not have placed in a sealed cover, its recommendations/ ignoring the fact that in the meantime he has been chargesheeted in 1985 and 1993.

High Court

9. We have seen the /judgements relied upon by the applicant wherein it has been held that the promotion has to be considered on the basis of the record in existence on the date when the juniors were promoted and if there is no disciplinary proceedings initiated or pending on that date

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there was no ground to place his case in a sealed cover. However, the decisions in these cases will not be binding in the facts of this case, having regard to the more recent decisions of the Supreme Court in UOI v. Kewal Kumar and Delhi Development Authority v. H.C. Khurana (supra). These two decisions have also analysed the decision in Jankiraman's case (supra). In the Kewal Kumar case, the Supreme Court held:

"In Jankiraman's case itself, it has been pointed out that the sealed cover procedure is to be followed where a government servant is recommended for promotion by the DPC, but before he is actually promoted if 'he is either placed under suspension or disciplinary proceedings are taken against him or a decision has been taken to initiate proceedings or criminal prosecution is launched or sanction for such prosecution has been issued or decision to accord such sanction is taken.' Thus, the sealed cover procedure is attracted even when a decision has been taken to initiate disciplinary proceedings, or 'decision to accord sanction for prosecution is taken' or 'criminal prosecution is launched or.... decision to accord sanction for prosecution is taken.' (Emphasis added).

10. The object of following the sealed cover procedure has also been indicated by the Supreme Court in the other decision - Delhi Development Authority v. H.C. Khurana (supra). In this case the Court has held that the guidelines for attracting the sealed cover are justified. The court has observed that it is obvious that when the competent authority takes the decision to initiate a disciplinary proceeding or steps are taken for launching a criminal prosecution against the government

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servant, he cannot be given the promotion, unless exonerated, even if the government servant is recommended for promotion by the DPC being found suitable otherwise. In this case it was held that "where a decision has been taken to initiate the disciplinary proceedings against a government servant, his promotion, even if he is found otherwise suitable, would be incongruous, because a government servant under such a cloud should not be promoted till he is cleared of the allegations against him, into which an inquiry has to be made according to the decision taken." (emphasis added) To reconcile these conflicting interests of the government servant and public administration, the court further held:

"the only fair and just course is, to consider his case for promotion and to determine if he is otherwise suitable for promotion, and keep the result in abeyance in sealed cover to be implemented on conclusion of the disciplinary proceedings; and in case he is exonerated therein, to promote him with all consequential benefits, if found otherwise suitable (sic) by the Selection Committee. On the other hand, giving him promotion after taking the decision to initiate disciplinary proceedings, would be incongruous and against public policy and principles of good administration. This is the rationale behind the guideline to follow the sealed cover procedure in such cases, to prevent the possibility of any injustice or arbitrariness."

(emphasis added)

11. In Kewal Kumar's case, the Court held that

where the First Information Report was registered by

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the Central Bureau of Investigation and on that basis the decision had been taken by the competent authority to initiate disciplinary proceedings for imposition of major penalty on the respondent prior to the meeting of the D.P.C., the applicability of the sealed cover procedure cannot be doubted. In this case it was held that even if the charge sheet was issued by its dispatch to the respondent subsequent to the meeting of the D.P.C. this fact alone cannot benefit the respondent. We have to examine the facts in each case to see if the sealed cover procedure is justified or not.

12. In Jankiraman's case (supra) when dealing with the SLP (Civil) No.2344/90, the Supreme Court held (in para 48) as follows:-

" The Tribunal has found fault with the authorities on two grounds. The Tribunal has observed that although when the DPC met in June 1988, the employee was already served with a charge-sheet on February 22, 1988 and, therefore, the sealed cover procedure could not be faulted, since admittedly his juniors were given promotion with retrospective effect from July, 30, 1986, the DPC should not have excluded the respondent's name from consideration when it met on June 3, 1988. The second fault which the Tribunal has found is that since the penalty of stoppage of increment was imposed at the end of the disciplinary proceedings, it was not open for the authorities to deny the respondent his promotion to the Selection Grade as that amounted to double penalty. Having taken this view, the Tribunal has directed that a Review DPC should consider the respondent's case for promotion w.e.f. July, 1986 when his juniors were given promotion taking into account his performance and confidential records upto 1986. We are afraid the Tribunal has taken an erroneous view of the matter.

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Admittedly, the DPC met in June 1988 when the employee was already served with the charge-sheet on February 22, 1988. The charge sheet was for misconduct for the period between 1982 and 1985. Admittedly further, the employee was punished by an order of August 19, 1988 and his one increment was withheld. Although, therefore, the promotions to his juniors were given with retrospective effect from July 30, 1986, the denial of promotion to the employee was not unjustified. The DPC had for the first time met on June 3, 1988 for considering promotion to the Selection Grade. It is in this meeting that his juniors were given Selection Grade with retrospective effect from July 30, 1986, and the sealed cover procedure was adopted in his case. If no disciplinary proceedings were pending against him and if he was otherwise selected by the DPC he would have got the Selection Grade w.e.f. July 30, 1986, but in that case the disciplinary proceedings against him for his misconduct for the earlier period, viz. between 1982 and 1985 would have been meaningless. If the Tribunal's finding is accepted it would mean that by giving him the Selection Grade w.e.f July 30, 1986 he would stand rewarded notwithstanding his misconduct for the earlier period for which disciplinary proceedings were pending at the time of the meeting of the DPC and for which again he was visited with a penalty. We, therefore, allow the appeal and set aside the finding of the Tribunal. There will, however, be no order as to costs."

(Emphasis added)

13. From the above decisions of the Supreme Court it is seen that where a government servant is being considered for promotion by the D.P.C., if any disciplinary proceedings are pending against him for misconduct on that date, then this fact cannot be ignored, and the recommendations of the D.P.C. can be kept in a sealed cover in terms of DOP&T O.M. dated 12.1.1988. The facts in the case before us are similar to the case dealt with in para 48 of Jankiraman's case (supra) where the adoption of the

sealed cover procedure has been upheld by the Supreme Court. In order to deny the benefit of promotion by adopting the sealed cover procedure, the government servant must either have been suspended under the rules or disciplinary proceedings must be pending against him. When the OPC met in September- October, 1994 to consider the promotion/regularisation of eligible persons who were holding the posts of S.E. (Civil) on ad hoc basis, it cannot be denied that disciplinary proceedings in respect of the chargesheets dated 30.10.1985 and 10-9-1993 were pending against the applicant. In the circumstances, as also observed by the Supreme Court in H.C.Khurana's case (supra), the only way to reconcile the conflicting interests of the government servant and public administration is to consider his case for promotion to see if he is otherwise suitable for promotion, and keep the result in abeyance in a sealed cover to be implemented on conclusion of the disciplinary proceedings. It would be anomalous if the Govt. after taking the decision to initiate disciplinary proceedings against the applicant for major penalty in 1985 and minor penalty in 1993 is required to completely ignore these facts in 1994 and grant him promotion w.e.f. 31.12.1983.

JS.

As held by the Supreme Court this would be incongruous and against public policy and principles of good administration to promote a person against whom serious charges are pending. It might have been a different matter if the DPC had in fact met prior to the decision to initiate disciplinary proceedings or issue of the chargesheet in 1985 for considering the promotions for vacancies in 1983 but that is not the case here.

14. In this case, admittedly the applicant has been promoted on ad hoc basis as S.E.(Civil) w.e.f. 11.10.1982 and is still continuing in that post. Therefore, one possible view urged by Sh.V.K.Rao, learned counsel for the applicant was that since he is already promoted and working in the higher post, there would be no point in keeping his case in a sealed cover in 1994. Normally it would appear that this view is not incorrect, but this cannot be accepted here, as the applicant has been promoted only on ad hoc basis. When we consider the facts more closely, it will be seen that the effect of regular appointments of S.E.(Civil), which is what the applicant seeks was being considered by the DPC in September-October, 1994, yearwise from 1982- 1993, which if granted will mean that he will

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be entitled to certain benefits, including seniority over his juniors and perhaps getting the benefit of ad hoc service also. This will, therefore, amount to conferring on him a reward or benefit of promotion when he is facing disciplinary proceedings on serious charges which cannot be accepted, following the aforesaid Supreme Court decisions. The DPC could not legally ignore the fact of the chargesheets and give him promotion on regular basis which were given to his juniors who were clear from the vigilance angle. In the circumstances, ^{the} only thing the DPC could do, and which it has followed under the law, is to keep the recommendations about his promotion as S.E.(Civil) in a sealed cover, and this procedure cannot, therefore, be faulted and is valid.

15. In the facts and circumstances of the case, therefore, we do not find that the action of the respondents in adopting the sealed cover procedure is arbitrary, unreasonable or against the instructions/rules which justifies any interference in the matter. The applicant can be considered for promotion as S.E. (Civil) on regular basis only in accordance with law. Till he is so regularly promoted as S.E.(Civil)

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which will depend on the results of the disciplinary proceedings against him, the question of his further promotion as Chief Engineer(Civil) does not arise. In the circumstances, the applicant is not entitled to any relief. However, the respondents should take all necessary steps to complete the disciplinary proceedings and pass final order thereon as expeditiously as possible.

16. In the result, the O.A. fails and is dismissed with the above observations. No costs.

Lakshmi Swaminathan (Smt. Lakshmi Swaminathan) (N.V.Krishnan)
Member (J) 11/1/96. Acting Chairman

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